UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

DIANE JUNE BURNS Plaintiff, v. PORTFOLIO RECOVERY ASSOCIATES, L.L.C. Defendant.	CIVIL ACTION COMPLAINT 2:16-cv-00517 JURY TRIAL DEMANDED

COMPLAINT

NOW comes DIANE JUNE BURNS ("Plaintiff"), by and through her attorneys, Sulaiman Law Group, Ltd., complaining as to the conduct of Defendant, PORTFOLIO RECOVERY ASSOCIATES, L.L.C. ("Defendant"), as follows:

NATURE OF THE ACTION

1. Plaintiff brings this action for damages pursuant to the Fair Debt Collection Practices Act ("FDCPA") under 15 U.S.C. §1692 *et seq.*, the Telephone Consumer Protection Act ("TCPA") under 47 U.S.C. §227 and the Indiana Deceptive Consumer Sales Act ("IDCSA") under I.C. 24-5-0.5 for Defendant's unlawful conduct.

JURISDICTION AND VENUE

2. This action arises under and is brought pursuant to the FDCPA and TCPA. Subject matter jurisdiction is conferred upon this Court by 15 U.S.C §1692, 47 U.S.C §227, 28 U.S.C. §§1331 and 1337, as the action arises under the laws of the United States. Supplemental jurisdiction exists for the state law claim pursuant to 28 U.S.C. §1367.

3. Venue is proper in this Court pursuant to 28 U.S.C. §1391 as Defendant conducts business in the Northern District of Indiana and a substantial portion of the events or omissions giving rise to the claims occurred within the Northern District of Indiana.

PARTIES

4. Plaintiff is a 67 year old person, who at all times relevant resided at 664 North Hobart Street, Apartment 1, Hobart, Indiana, which lies within the Northern District of Indiana.

5. Plaintiff is a "consumer" as defined by 15 U.S.C. §1692a(3) of the FDCPA.

6. Plaintiff is a "person" as defined by 47 U.S.C. §153(39) of the TCPA.

7. Plaintiff is a "person" as defined by the IDCSA, I.C. 24-5-0.5-2(a)(2).

8. Defendant is a limited liability company formed under the laws of the State of Delaware. Defendant is a debt collector and debt buyer with a principal place of business located at 120 Corporate Boulevard, Suite 100, Norfolk, Virginia.

9. Defendant is a "debt collector" as defined by §1692a(6) of the FDCPA, because it regularly use the mail and/or the telephone to collect, or attempt to collect, delinquent consumer accounts.

10. Defendant is a "person" as defined by 47 U.S.C. §153(39) of the TCPA.

11. Defendant is a "supplier" as defined by the IDCSA, I.C. 24-5-0.5-2(a)(3).

12. Defendant's collection calls to Plaintiff were "consumer transactions" as defined by the IDCSA, I.C. 24-5-0.5-2(a)(1)(C).

FACTS SUPPORTING CAUSES OF ACTION

13. Well over a year ago, Plaintiff began receiving calls from Defendant to her cellular phone, (219) XXX-7348. *See* attached Exhibit A is a true and correct copy of an affidavit signed by Plaintiff.

14. The phone number that Defendant most often uses to contact Plaintiff is (731) 256-6444. *See* Exhibit A.

15. Defendant has also used the following phone numbers to call Plaintiff: (757) 320-1592, (731) 256-6897, (620) 860-0784, (731) 577-4188, (757) 320-4166, (757) 355-6494, (757) 320-4168, (731) 410-3143, (731) 410-3151, (757) 821-2260, (757) 952-2646, (757) 952-2802, (757) 320-1591, (620) 860-0783 and (205) 379-6014. *Id.*

16. Upon information and belief, the above are all phone numbers utilized by Defendant to contact consumers during its debt collection activity.

17. When answering calls from Defendant, Plaintiff experiences a noticeable pause, several seconds in length, before a live representative comes on the line, or she hears a recorded message. *Id.*

18. After speaking with one of Defendant's representatives, Plaintiff was informed that she was being contacted for a debt she allegedly incurred. *Id.*

19. Upon information and belief, Defendant was contacting Plaintiff seeking payment of a consumer obligation.

20. After receiving a host of calls from Defendant, Plaintiff notified it that she was experiencing serious health problems and could not afford to make payment. She further demanded that Defendant stop contacting her. *Id.*

21. Plaintiff has demanded that Defendant stop calling her on several occasions. *Id.*

22. Despite her pleas, Defendant has continued to relentlessly call Plaintiff's cellular phone without her permission. *Id.*

23. Many of Defendant's calls have come while Plaintiff was in and out of the hospital recovering from a heart attack. *Id.*

24. Defendant's calls have increased Plaintiff's stress level and worsened her physical condition. *Id.*

25. Concerned over Defendant's conduct, Plaintiff spoke with Sulaiman regarding her rights, resulting in fees and expenses.

26. Plaintiff has suffered financial loss as a result of Defendant's actions.

27. With the goal of ending Defendant's conduct, Plaintiff has purchased and maintained an application on her cellular phone to block the calls. *Id.*

28. Plaintiff has incurred expenses that she would not have otherwise incurred if not for Defendant's calls, including the loss of cellular phone capacity.

29. Plaintiff has been unfairly and unnecessarily harassed by Defendant's actions.

COUNT I – VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT

30. Plaintiff repeats and realleges paragraphs 1 through 29 as though full set forth herein.

a. Violations of the FDCPA §1692c(a)(1) and §1692d

31. The FDCPA, pursuant to 15 U.S.C. §1692d, prohibits a debt collector from engaging "in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt." §1692d(5) further prohibits, "causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number."

32. Defendant violated §1692c(a)(1), d and d(5) when it continuously called Plaintiff after being notified to stop. This repeated behavior deeply harassed and worsened Plaintiff's quality of life. Plaintiff conveyed to Defendant that she could not make a payment to it and demanded not to be contacted further. Defendant ignored these pleas and continued to call Plaintiff knowing it would be inconvenient and harassing her.

b. Violations of the FDCPA § 1692e

32. The FDCPA, pursuant to 15 U.S.C. §1692e, prohibits a debt collector from using "any false, deceptive, or misleading representation or means in connection with the collection of any debt."

33. In addition, this section enumerates specific violations, such as:

> "The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer." 15 U.S.C. §1692e(10).

34. Defendant violated §1692e and e(10) when it used deceptive means to collect and/or attempt to collect the subject debt. Defendant placed calls to Plaintiff's cellular phone using a long list of different phone numbers. While Defendant initially called Plaintiff using the phone number ending in 6444, it ended up calling her from at least fifteen other numbers. Calling from different phone numbers and area codes in an attempt to trick Plaintiff into answering the phone calls is a deceptive practice. Defendant was notified by Plaintiff to cease calling her cellular phone. Instead of stopping, Defendant doubled down on its collection efforts by using different phone numbers.

c. Violations of the FDCPA §1692f

35. The FDCPA, pursuant to 15 U.S.C. §1692f, prohibits a debt collector from using "unfair or unconscionable means to collect or attempt to collect any debt." Defendant violated §1692f when it unfairly and unconscionably attempted to collect on a debt by continuously calling Plaintiff after being notified to stop. Even after telling Defendant to stop contacting her, Plaintiff continued to receive automated phone calls to her cellular phone. Not only did Defendant place calls after being told to stop, but it consciously continued to call Plaintiff using a wide-array of area codes and phone numbers. Attempting to trick and coerce Plaintiff into answering the phone calls after being notified to stop calling is unfair and unconscionable behavior.

36. As pled in paragraphs 24 through 29, Plaintiff has been harmed and suffered damages as a result of Defendant's illegal actions.

WHEREFORE, Plaintiff, DIANE JUNE BURNS, respectfully requests that this Honorable Court enter judgment in her favor as follows:

a. Declaring that the practices complained of herein are unlawful and violate the aforementioned bodies of law;

b. Awarding Plaintiff statutory damages of $1,000.00 as provided under 15 U.S.C. §1692k(a)(2)(A);

c. Awarding Plaintiff actual damages, in an amount to be determined at trial, as provided under 15 U.S.C. §1692k(a)(1);

d. Awarding Plaintiff costs and reasonable attorney fees as provided under 15 U.S.C. §1692k(a)(3);

e. Enjoining Defendant from further contacting Plaintiff; and

f. Awarding any other relief as this Honorable Court deems just and appropriate.

COUNT II – VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT

37. Plaintiff repeats and realleges paragraphs 1 through 36 as though fully set forth herein.

38. The TCPA, pursuant to 47 U.S.C. § 227(b)(1)(iii), prohibits calling persons on their cellular phone using an automatic telephone dialing system ("ATDS") without their consent. The TCPA, under 47 U.S.C. § 227(a)(1), defines an ATDS as "equipment which has the capacity...to store or produce telephone numbers to be called, using a random or sequential number generator; and to dial such numbers."

39. Defendant used an ATDS in connection with its communications directed towards Plaintiff's cellular phone. The noticeable pause that Plaintiff experienced during answered calls from Defendant before being connected to a live representative is instructive that an ATDS was being utilized to generate the phone calls. Similarly, the recorded messages that Plaintiff heard

could only be generated by an ATDS. The nature and frequency of Defendant's contacts points to the involvement of an ATDS.

40. Defendant violated the TCPA by placing phone calls to Plaintiff's cellular phone using an ATDS without her consent. Any consent Plaintiff *may* have given to Defendant was explicitly revoked by Plaintiff's demands to cease calling her cellular phone.

41. The calls placed by Defendant to Plaintiff were regarding business transactions and not for emergency purposes as defined by the TCPA under 47 U.S.C. §227(b)(1)(A)(i).

42. Under the TCPA, pursuant to 47 U.S.C. § 227(b)(3)(B), Defendant is liable to Plaintiff for at least $500.00 per call. Moreover, Defendant's willful and knowing violations of the TCPA should trigger this Honorable Court's ability to triple the damages to which Plaintiff is otherwise entitled to under 47 U.S.C. § 227(b)(3)(C).

WHEREFORE, Plaintiff, DIANE JUNE BURNS, respectfully requests that this Honorable Court enter judgment in her favor as follows:

a. Declaring that the practices complained of herein are unlawful and violate the aforementioned statutes and regulations;

b. Awarding Plaintiff damages of at least $500.00 per phone call and treble damages pursuant to 47 U.S.C. §§ 227(b)(3)(B)&(C);

c. Awarding Plaintiff costs and reasonable attorney fees;

d. Enjoining the Defendant from further contacting Plaintiff; and

e. Awarding any other relief as this Honorable Court deems just and appropriate.

COUNT III – VIOLATIONS OF THE INDIANA DECEPTIVE CONSUMER SALES ACT

43. Plaintiff repeats and realleges paragraphs 1 through 42 as though fully set forth herein.

44. Defendant violated I.C. 24-5-0.5-3(a) and (b)(19) by engaging in an unfair, abusive and deceptive practice through its systematic collection efforts towards Plaintiff.

45. The IDCSA states:

> "A supplier may not commit an unfair, abusive, or deceptive act, omission, or practice in connection with a consumer transaction. Such an act, omission, or practice by a supplier is a violation of this chapter whether it occurs before, during, or after the transaction. An act, omission, or practice prohibited by this section includes both implicit and explicit misrepresentations." I.C. 24-5-0.5-3(a).
>
> "Without limiting the scope of subsection (a), the following acts, and the following representations as to the subject matter of a consumer transaction, made orally, in writing, or by electronic communication, by a supplier are deceptive acts: The violation by a supplier of 47 U.S.C. 227, including any rules or regulations issued under 47 U.S.C. 227." I.C. 24-5-0.5-3(b)(19).

46. Defendant engaged in unfair, abusive and deceptive behavior in its transactions with Plaintiff. Through systematic and frequent collection attempts, Defendant has used an ATDS to relentlessly contact Plaintiff. Defendant was also specifically notified by Plaintiff that she no longer wanted to be contacted since she was recovering from a heart attack and was unable to make payments. However, Defendant has ignored these prompts in an abusive attempt to collect payment from her.

47. Defendant has also used at least fifteen different phone numbers in its attempt to collect debt from Plaintiff. Even after being told to stop calling, Defendant refused and instead began calling Plaintiff using unrecognizable phone numbers. This was an attempt to trick Plaintiff into answering the phone calls and an abusive effort to collect payment from her.

48. In violating the TCPA, Defendant engaged in illegal behavior during its collection efforts towards Plaintiff. Defendant intended that Plaintiff rely on its illegal behavior. The IDCSA was designed to protect consumers, such as Plaintiff, from the exact behavior committed by Defendant.

49. The IDCSA further states:

> "A person relying upon an uncured or incurable deceptive act may bring an action for the damages actually suffered as a consumer as a result of the deceptive act or five hundred dollars ($500), whichever is greater. The court may increase damages for a willful deceptive act in an amount that does not exceed the greater of: (1) three (3) times the actual damages of the consumer suffering the loss; or (2) one thousand dollars ($1,000)." I.C. 24-5-0.5-4(a)(1)(2).

50. Defendant's conduct is part of a purposeful and systematic scheme to illegally solicit unsophisticated consumers who may not be aware of their rights. Defendant's conduct is an incurable deceptive act of which notice would not remedy.

51. Although unsuccessful, Plaintiff made attempts to correct Defendant's incurable deceptive acts by demanding that it cease contacting her.

52. As pled in paragraphs 24 through 29, Plaintiff has suffered damages as a result of Defendant's unlawful conduct. Plaintiff is entitled to relief pursuant to I.C. 24-5-0.5-4(a)(1)(2).

WHEREFORE, Plaintiff, DIANE JUNE BURNS, respectfully requests that this Honorable Court enter judgment in her favor as follows:

a. Declaring that the practices complained of herein are unlawful and violate the aforementioned statutes and regulations;

b. Awarding Plaintiff damages, in an amount to be determined at trial, as provided under I.C. 24-5-0.5-4(a)(1)(2);

c. Awarding Plaintiff costs and reasonable attorney fees as provided under I.C. 24-5-0.5-4(a);

d. Enjoining Defendant to cease contacting Plaintiff; and

e. Awarding any other relief as this Honorable Court deems just and appropriate.

Dated: December 15, 2016

Respectfully submitted,

s/ Nathan C. Volheim
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